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ABSTRACT

The Institute of Criminal Law and Procedure analyzes the merits, limitiations, and problems of various approaches to prison industry and recommends measures and programs to improve industries. Federal and State legislation affecting prison industries were examined, several prison industries were visited, and the literature of prison industries was reviewed. The study's findings are these: Prison industries exist in the context of correctional systems whose future dimensions are unknown and whose purposes are unclear. Therefore, before effective prison industry planning can take place, agreement must be reached as to underlying correctional philosophy and as to the expected numbers and distribution of offenders in the correctional system. Prison industries today do not achieve their traditional goals and should be modified (possibly eliminated). Intelligent modification will be possible only with better information on the true costs of prison industries as determined through standardized accounting procedures. Prison industries should provide a real work experience, including full work days, job compensation, minimum wage, and merit increases in pay. New and closer relationships with private industry can benefit prison industry. Finally, laws restricting prison production and marketing should be repealed. (Author)

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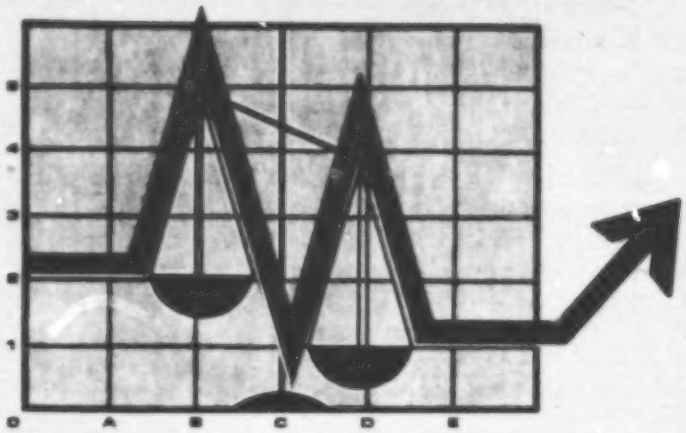

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THE ROLE OF PRISON INDUSTRIES
NOW AND IN THE FUTURE:
A PLANNING STUDY

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THE ROLE OF PRISON INDUSTRIES NOW AND IN THE FUTURE: A PLANNING STUDY

Institute of Criminal Law and Procedure
Georgetown University Law Center
August, 1975

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16. Abstracts

In this study the Institute analyzes the merits, limitations, and problems of various approaches to prison industry and recommends measures and programs to improve industries. Federal and state legislation affecting prison industries were examined, several prison industries were visited, and the literature of prison industries was reviewed. The study's findings ~~follow.~~ are these:

Prison industries exist in the context of correctional systems whose future dimensions are unknown and whose purposes are unclear. Therefore, before effective prison industry planning can take place, agreement must be reached as to underlying correctional philosophy and as to the expected numbers and distribution of offenders in the correctional system.

Prison industries today do not achieve their traditional goals and should be modified (possibly eliminated). Intelligent modification will be possible only with better information on the true costs of prison industries as determined through standardized accounting procedures. Prison industries should provide a real work experience, including full work days, job compensation, minimum wage and merit increases in pay. New and closer relationships with private industry can benefit prison industry. Finally, laws restricting prison production and marketing should be repealed.

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Dr. F. Lovell Bixby, who died on August 5, 1975, contributed throughout the project, drawing on over 45 years of active and distinguished service to corrections in the U.S. and abroad. Dr. Bixby was intimately familiar with the development of prison industries and insisted on a sound historical perspective for understanding their problems. We hope this work honors him as he honored us by being our friend.

FINDINGS AND RECOMMENDATIONS

1. FINDING: Disagreement as to the goals of corrections and, therefore, the goals of prison industries is widespread and becoming more pronounced. Some persons advocate rehabilitation as the appropriate goal for corrections; others claim that rehabilitation is neither the effect nor the real reason the society incarcerates offenders--we incarcerate offenders to punish them. Those who advocate an honest recognition of the punishing purposes of corrections also understand the burden this places on society to restrict the rights of incarcerated persons as little as possible consistent with the protection of society. Thus, the freedom of a convicted person is taken from him by incarceration, but his privacy, choice of activities, and other accompaniments of freedom need not be and should not be removed unless and only to the extent that they endanger the security of the prison or of society.

These two views--rehabilitation and punishment--have different implications for prison industries planning. Under the former view, a prisoner may be assigned to industries as a program to prepare him for work after release. Refusal of such an assignment will reflect badly on the inmate at his parole hearing and may lead to restrictions on his privileges within the institution. Once assigned to the program, he will be subject to interruptions for other rehabilitative activities, such as visiting, therapy, and school.

The second view of the purposes of corrections--the view that the primary function of incarceration is punishment--cannot justify prison industries as a rehabilitative program. Under this view, prisoners should not be assigned to industries, but instead be free to choose how they wish to spend their time. They may decide to work in industries, squander their time or spend it reading and carry on other activities consistent with the security of the institution and with the protection of society.

The purpose of industries in such a case is to provide a means by which prisoners may occupy their time, earn money and produce needed goods and services.

RECOMMENDATION: That correctional policy makers and others involved in planning agree on an achievable philosophy of corrections and of prison industries in order to facilitate agreement on the functions and nature of the prison industries program.

2. FINDING: The typical prison industry today does not achieve most of its asserted objectives, including those considered the most important by correctional personnel and industries administrators: skill training and attitude training, or "rehabilitation." Furthermore, prison industries will not achieve their objectives until these are identified and characteristics of prison industries in conflict with these objectives are reduced or eliminated. Increased knowledge of the costs and benefits attributable to prison industries will permit rational rethinking and planning of prison industries for the future. Corrections departments do not often have in house the expertise and objective viewpoint needed to acquire the knowledge required for a thorough rethinking and reorganization of prison industries. Thus, several states have begun working with private industry to design and develop new relationships with private industry.

RECOMMENDATION: (1) That correction departments analyze their industries programs critically, considering a) what they cost to operate, b) their results in terms of training and production and c) product and service pricing policy and other matters. Standards should be developed and followed by all states uniformly for accounting systems in prison industries. These standards should show the costs of security, value of land, plant and equipment and other institutional costs for services provided to prison industries, as well as direct and indirect costs of the combined and individual industries.

(2) That corrections departments make use of business management consultants and other experts to evaluate existing prison industries and plan new ones.

3. FINDING: Prison industries are isolated and to a degree protected from other industries. Consequently, their operations are relatively unresponsive to market conditions that affect other industries; their methods often have no relation to competitive practices in the outside world; and prisoners working in them learn little of the practices of private industries.

RECOMMENDATION: (1) That corrections departments forge new cooperative relationships with private industry and organized labor for mutual benefit.

(2) That real-life conditions be simulated in prison industries. These should include, at a minimum, competition for jobs and full work days (accompanied by abolition of over-assignment), well-trained supervisors, up-to-date equipment, a pay policy aimed at the eventual achievement of prevailing pay through profit-sharing and elimination of prison industries profits for non-industrial programs, such as institutional maintenance services.

(3) That corrections departments base their planning of new industries to a large extent on an analysis of products and services for which there is expected to be a heavy market demand in future years.

4. FINDING: Laws restricting prison industries marketing do little to protect private industries and are frequently circumvented by government agencies. They are an unnecessary impediment to prison industries.

RECOMMENDATION: That laws restricting prison industries marketing and production be abolished.

5. FINDING: The state-by-state organization, regulation, and administration of prison industries has created industries without a sense of a "state of the art," purpose or standards. Prison industries in a time of change need a national forum to facilitate exchange of ideas among correctional systems and between them and public, labor and private industry leaders and to promote development of leadership. One vehicle for these purposes would be an advisory coalition for policy reform to design standards and guidelines for state, regional and national marketing, new legislation, state subsidy of prison industries, product pricing, fair contract procedures, inmate-worker

compensation policies and prisoners' rights as employees to vacation, sick leave, disability compensation, unemployment insurance, social security coverage and collective bargaining.

RECOMMENDATION: That a National Commission on Prison Industry Standards, Administration and Marketing be established independently or within the U. S. Department of Labor or the Department of Commerce.

I. INTRODUCTION

What should prison industries provide for those who work in them? Pay? Training? A guaranteed job after release? Should the program include all prisoners? Only long-termers? Answers to these questions are difficult, because many conflicting goals have been advanced as appropriate for prison industries programs. Some of these goals conflict with the correctional context of industries; some conflict with laws and powerful non-governmental interests. Furthermore, the character of correctional programming and of prison populations is changing. These factors make a rethinking of the actual and potential achievement of prison industries a timely pursuit.

In 1972, the U. S. Department of Labor gave a grant to the Georgetown University Law Center Institute of Criminal Law and Procedure (the Institute) to examine the merits, limitations and problems of various approaches to prison industry. The Institute was to recommend specific measures and programs and suggest research and demonstration efforts. To accomplish its task, the Institute reviewed the literature of prison industries, gathered statistics, called in consultants, visited prison industries programs in several states, and studied the legal and historical framework in which prison industries developed and exist.

The Institute's job proved to be a difficult one. We were hampered by our varying philosophies of corrections, by an inability to estimate accurately the impact of innovative approaches to industries, and by the cold realities of correctional underfunding and traditional management. The present document points up some difficulties in planning an improved prison industries program. Few answers are offered, but issues are delineated that cannot be ignored in the development of a program to meet the needs of inmates and correctional management.

One difficulty that arose in the present study, and which illustrates some of the complexities of planning an industries program, was the definition of prison industries. States use

the term inconsistently. Farming, although it produces a product, is in some states not classified as an industry. Programs in which inmates provide services may be categorized as vocational training in one state and an industry in another. Privately-run industries for inmates can blur the distinction between work release and industries.

For purposes of this report, the Institute settled on a loose definition of industries that included institution-based operations producing products or services, most of whose consumers are external to the institution, and for which inmates are paid (except in the few states in which no inmate is paid for <u>any</u> work inside an institution).

The difficulty encountered in reaching a common definition of prison industries, although notable, is exceeded by and perhaps partially caused by, a lack of agreement as to the goals of prison industries. This lack of agreement within departments of corrections is one factor that has prevented most prison industries from accomplishing very much of anything. Exceptions will be noted: Federal Prison Industries, Inc. meets a goal of producing furniture that is generally acknowledged to be of high quality; most prison industries have some success in meeting a goal of busying a part of the inmate population. But are these goals appropriate for prison industries? Can proper goals for prison industries be established without reference to the goals of corrections generally? We think not.

Correctional thinking is undergoing an upheaval. "Rehabilitation" efforts are being criticized both as ineffective and as wrong. Some critics would improve programs to rehabilitate inmates; others would abolish them and call for a frank admission that we incarcerate offenders to punish.

These points of view contain very different implications for the design of a prison industries program. Until a common correctional philosophy is reached within a jurisdiction, industri planning will be uncoordinated and at odds with itself. Thus, the present report refrains from setting forth a program and merely outlines some of the matters that must be considered.

Inasmuch as the report probably reflects the authors' views, it should be stated that we vary among ourselves, but tend to be of the school that has lost faith in "rehabilitation."

The following chapters explore the problems further and set forth a number of suggested steps toward solutions. Chapter II presents a brief history of prison industries and their present scope. Chapter III analyzes the goal conflicts in the traditional prison industries model. Chapter IV challenges the traditional goals, and the final chapter speculates on the future of prison industries.

II. HISTORY AND SCOPE OF PRISON INDUSTRIES

History

The evolution of prison industries in America reflects the colorful history of the labor movement, wars and changing penal philosophies. Systems of prison labor that were used in early days would now be unconscionable, illegal or rouse the wrath of organized labor.

Barnes and Teeters describe six systems of prison labor used in America in New Horizons in Criminology.[1/] The earliest systems (other than agricultural work) were the contract system, and two variations on it, the piece-price system and the lease system. Under the original contract system, prisoners were released to private manufacturers who supplied materials, machinery and supervision. The prison management provided space and guard service. In the lease system variation contractors instead of prison personnel handled discipline. The piece-price system was like the contract system, except that the prison provided work supervisors. The manufacturer still supplied machinery and materials and paid only for work done satisfactorily.

The contract system of prison labor with its variations was used widely from the end of the 18th century until the growth of organized labor 80 to 90 years later. It was at its strongest from 1825 to 1840 when the Industrial Revolution reduced manufacturers' reliance on individual crafting and markets were opening up. "By 1828," Barnes & Teeters assert, "the Auburn and Sing Sing prisoners were paying for themselves."

But the contract system permitted too much abuse of both prisoners and prisons. Contracts between the prison and the contractor were often one-sided -- permitting the contractor, but not the prison, to cancel the arrangement.[2/] The contractor paid half the going wage for prisoner labor and got a free

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1/ Harry E. Barnes and Negley K. Teeters, (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 3rd ed. 1959), pp. 522-542.

2/ Louis N. Robinson, Should Prisoners Work? (Philadelphia: John C. Winston Co., 1931), p. 92.

factory. [3] By 1929, the contract system was illegal in the Federal prison system and 17 states.[4]

The end of the contract system was brought about in part by humanitarian concerns of those whose consciences were pricked by writers such as Kate Richards O'Hare, an ex-Minnesota prisoner who detailed her labor experiences in a book, In Prison,[5] and in part by the concerns of the self-interested groups with whom prisoners were in economic competition.[6] In 1930, according to one study, there were at least 40 prison industries whose products were sold on the open market.[7] As the value of prison products grew, so did opposition of private industry to their unrestricted sale.

The competition given to free enterprise by prison labor spurred a variety of restrictive legislation. At the federal level, restrictions on marketing of prison-made goods were placed by three statutes. The Hawes-Cooper Act of 1929 allowed states to regulate prison products in their states whether from their own or other states' prison systems. The Ashurst-Summers Act of 1935, passed the year after Hawes-Cooper went into effect, required labeling of prison-made goods and prohibited transportation of prison-made goods intended to be received, possessed, sold or used in violation of the laws of the state into which the goods were shipped. Congress clamped down further in 1940 by passing the Summers-Ashurst Act, which prohibited interstate transportation of

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3 / Frank T. Flynn, "The Federal Government and the Prison-Labor Problem in the States. I. The Aftermath of Federal Restrictions," (The Social Service Review, Vol. 24, No. 1, March 1950, pp. 19-40), p. 20.

4 / Robinson, op cit., p. 92.

5 / New York: Knopf, 1923.

6 / Flynn, op cit. note 1, p. 239.

7 / Attorney General's Survey of Release Procedures, Vol. V. Prisons, Washington, D. C. 1940, pp. 189-190.

convict-made goods, other than agricultural produce.[8]

Subsequently, states passed legislation forbidding prisons to make products that would compete with free labor; in some cases a requirement of diversification of industries was written into law; labeling requirements were passed.[9]

Over time, the state-use and public works systems of prison labor gained popularity. Both systems were designed to benefit governments--a limited market--the former by making products, the latter by providing services. Although more than a quarter of all working prisoners were employed in state-use tasks in 1885, this percentage grew to 59 percent in 1940. Employment in public works projects in that period went from zero to 29 percent.[10]

In 1935, the Prison Industries Reorganization Administration was created by executive order.[11] The PIRA was to study prison industries and markets, actual and potential, and recommend a program to the President that would eliminate idleness in prisons and rehabilitate prisoners without creating undue competition for the private sector. In its two years the PIRA studied prison labor systems in 29 states, eventually producing 22 reports and gathering a favorable following in the press. But Congress refused to refund the agency, and it expired.[12]

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8 / The effect of these three laws is analyzed in Flynn, op cit, note 6.

9 / Barnes and Teeters, op. cit., p. 534.

10/ Ibid., p. 535.

11/ Executive Order 7194, September 26, 1935.

12/ For an account of the PIRA's brief existence, see Frank T. Flynn, "The Federal Government and the Prison-Labor Problem in the States. II. The Prison Industries Reorganization Administration," (The Social Services Review, Vol. 24, No. 2, June 1950, pp. 213-236.)

World War II gave prison industries a shot in the arm when restrictions were lifted by a 1942 Executive Order[13] to permit prisons to produce war materials. In 1947, however, the Executive Order's effect was ended. Industries again were severely restricted by laws that are, for the most part, still on the books.

In 1936, the Works Progress Administration funded a research project known as the Attorney General's Survey of Release Procedures. The five-volume report was released in 1939 and, while it made no specific recommendations regarding prison industries, it observed[14]

> ...in the simple ethics of a hard-working civilization whose success or failure was chiefly determined in terms of industrial achievement, work was the panacea for crime...in a generation when opportunity to work is being heralded as a "right" to be protected, and when competition for markets has become so keen that even the small item which prison production represents becomes a factor, work for prisoners is regarded as a boon to be granted grudgingly, if at all, by legislators representing free industry and free labor. And the change in this situation came suddenly at the very height of the development of prison industries.

As Howard B. Gill, a prison expert and member of the staff that produced the Attorney General's Survey noted in 1974,[15]

13/ Executive Order 9196, July 9, 1942.

14/ Attorney General's Survey of Release Producers, Vol. V., Prisoners, op. cit., p. 185.

15/ From a summary of prison industry history written for Entropy Limited, a Massachusetts consulting firm.

> ...by 1944, the Industrial Prison was a dead letter, and idleness became an outstanding feature of American state prisons except in the agricultural southern states. With an enormous market in Federal agencies, only Federal prisons maintained a reasonable industrial program. From 1944 through 1974, prison industries have been notable for their absence.

Legal Restrictions

State Regulation

For the present report the Institute of Criminal Law and Procedure conducted a study of laws affecting prison industries in twelve geographically and socially diverse states. The states whose statutes were reviewed are California,[16] Connecticut,[17] Georgia,[18] Illinois,[19] Michigan,[20] Minnesota,[21] New Jersey,[22] New York,[23] Ohio,[24] Pennsylvania,[25] Texas[26] and Virginia.[27]

16/ Cal. Penal Code (West 1970).

17/ Conn. Gen. Stat. Ann., Titles 18 and 58 (West 1958).

18/ Ga. Code Ann., Title 77 (Harrison Co. 1964).

19/ Ill. Rev. Stat., Ch. 38 (West 1972).

20/ Mich. Comp. Laws Ann., Chs. 800 and 801 (West 1968).

21/ Minn. Stat. Ann., Ch. 243 (West 1972).

22/ N. J. Stat. Ann., Titles 27 and 30 (West 1964).

23/ N.Y. Correction Law. §§170-197 (McKinney 1968).

24/ Ohio Rev. Code Ann., Titles 13 and 51 (W. H. Anderson Co. 1970).

25/ Pa. Stat. Ann., Title 61 (West 1964).

26/ Civ. Stat. of the State of Tex. Ann., Vol. 17 (West 1970).

27/ Code of Va. 1970 Ann., Title 53 (Michie Co. 1972).

Several provisions were found often in state prison labor legislation. Among them are the following:

1. Work is to be done for the state's benefit.

Establishes state-use and public works policy emphasis.

2. Prisons get first use of prison labor.

Establishes prime objective of using prison labor to support the cost of prison operations.

3. Contracts with other state departments for labor allowed.

Allows prison labor to be used for road construction, forestry camps, other public works. (Such a provision can enhance the value of private property when used inappropriately.)

4. State departments required to buy prison industry products.

Supports "state use" market limitation. The significance of this provision is limited by the control exercised over products that may be produced and absence of an enforcement mechanism.

5. Anti-evasion provisions so departments cannot avoid purchasing prison-made products.

Meant to enforce provision 4 above. In practice it can be nullified because prison industries seldom meet all product specifications and delivery schedules required by a local procurement authority predisposed to purchase from local vendors.

6. Contracts with private parties for prison labor forbidden.

Prohibits contract system of prison labor.

7. Sales on open market forbidden.

8. Products required to be branded or marked as prison-made.

9. Certain prices required for certain goods.

Such provisions express policy regarding fair market pricing of prison industry products. Administrative procedures for determining fair market price may be inadequate, however, permitting goods and services to be sold to other departments at below fair market prices.

10. Work requiring skilled labor forbidden.

Assures craft unions of protection from prison labor competition. (But also deprives prisoners of many types of useful skill training from which they could benefit.)

11. Industrial training named as goal.

In practice, rarely or never effectively achieved.

12. Six-day work week provided for.

This provision is not used in most states where it exists.

13. Money wages allowed as compensation.

14. Compensation may be paid directly to family.

Authorized payment of some or all of prisoner wages to dependents. Seldom used in practice because wages are so low.

15. Good time allowed as compensation.

Industrial good time is a fairly common form of compensation, but is often subject to rescission by the prison administration as punishment.

16. Prison industry commission to direct program.

A common provision which creates prison industry commissions to approve selection of new industries, budget and marketing

policies, etc. Typically the membership of such commissions is appointed by the Governor and represents business and labor.

17. Local approval of use of prison products by local government.

18. Funding by proceeds of sales.

Permits sales proceeds to be recycled back into industries. (These do not alone support industries operations.)

19. Transfer of surplus funds (profits) to other prison needs allowed.

Provides administrative flexibility to allocate prison industries profits to other budget items both for the industries and for other prison requirements.

Table 1 shows which of the twelve states studied have these provisions in their law.

All twelve of the states studied have extensive statutory provisions relating to prison industries. The most common provision, found in all of the statutory schemes studied, is the requirement that prison labor be used for the benefit of the state. Eleven of the twelve states provide for a regulatory body to aid in government decisions regarding prison industries. Eleven states also permit sale of surplus goods on the open market.

Another common provision, found in ten states, is that allowing pay for work done by prisoners. Five of these states also allow "good time" to be used to compensate inmates, and Georgia allows the latter, but not the former. Virginia has no statute specifying inmate compensation. An interesting, if seldom-used, provision regarding inmates' pay is that permitting earnings to be sent directly (in whole or part) to an inmate's dependents. This measure is seldom used, even where it appears in the law because pay is too low to justify the administrative costs involved.

Although a number of statutory provisions limit the market for prison-made products or sources, such as the

TABLE 1 - SUMMARY OF BASIC LEGAL PROVISIONS FOR PRISON INDUSTRIES IN 12 STATES

X = provision is present in state law

	Cal	Conn	Ga	Ill	Mich	Minn	NJ	NY	Ohio	Pa	Tex	Va
1. Work to be done for state's benefit	X	X	X	X	X	X	X	X	X	X	X	X
2. Prisons get first use of labor	X			X	X			X	X	X	X	
3. Contracts with other department for labor allowed	X						X					
4. State departments required to buy prison industry products	X	X		X	X		X	X	X		X	X
5. Anti-evasion provisions so departments can't avoid purchasing							X				X	
6. Contracts with private parties for labor forbidden	X		X	X	X		X	X	X		X	
7. Sales on open market forbidden	X			X				X	X		X	X
Exceptions:												
(a) Surplus goods	X	X	X	X	X	X	X	X		X	X	X
(b) Handicrafts	X	X	X	X	X	X		X				
8. Products required to be branded or marked as prison-made	X					X	X		X	X		
9. Certain prices required for certain goods	X	X							X			
10. Work requiring skilled labor forbidden	X				X					X		
11. Industrial training named as goal				X	X	X		X	X		X	X
12. Six day work week provided for				X					X	X	X	
13. Money wages allowed as compensation	X	X	X	X	X	X	X	X	X	X	X	
14. Compensation may be paid directly to family	X					X		X	X	X		
15. Good time allowed as compensation		X		X	X		X			X	X	
16. State prison industry commission to direct program	X	X	X	X	X	X	X		X	X	X	X
17. Local approval of use of prison products by local government					X	X			X	X		
18. Funding by proceeds of sales	X	X		X	X	X	X		X	X	X	
19. Transfer of surplus funds (profits) to other prison needs allowed	X							X			X	

prohibition against sale on the open market (found in half the states), and to some extent, possibly, the minimum price schedule (three states), other provisions are designed to guarantee a market. There are the requirements found in nine of the twelve states studied that the state government purchase prison-made products, and the enforcement provisions found in two of these states. Thus, the statutes have attempted to create a very limited but certain market. This system eliminates the beneficial effects of competition. State purchasing agents who comply with the statutes can encounter delays in delivery, unsatisfactory quality and little or no savings in cost. For these reasons, the statutes are often circumvented, reducing the actual market for prison products below its already limited potential.

A number of provisions concerning prison industries that are still on the books are expressions of earlier policies or penal philosophies. Among these is a "requirement" (not met) that prisoners work six days a week, found in four states.[28/] Balancing this vestige of hard labor penology is the specific mention in seven statutes of industrial training as a prison industry goal.

Finally, several statutory provisions deal with program administration, such as state commission or local government control over prison industry operation and marketing, and the use of proceeds of sales.

Federal Regulation

Legislation relating to industries in the federal prison system is found in Title 18 of the U. S. Code, Sections 4121-28. The basic act permitting prisoners to be employed in industries in federal prisons was passed in May 1930 (18 U.S.C. 4122). Four years later the idea of establishing a federal corporation to run prison industry had been developed by the Director of the Bureau of Prisons, with the Assistant Director of Industries

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28/ For example, in Michigan, the statute has a section requiring that all convicts not in solitary confinement must be kept "as far as practicable" at hard labor for ten hours every day except Sunday unless they are sick or disabled. M.C.L.A. §800.38.

(later a Director of the Bureau) in cooperation with the President of the American Federation of Labor. The Act authorizing the establishment of such a corporation was passed in 1934. From the beginning, the corporation has provided for diversification of industries (reducing the threat to any one free-world industry), production for government use, and involvement of Labor in the direction of Federal Prison Industries, Inc. George Meany, President of the AFL-CIO is on the Board of Directors.

A recent development that bears mentioning is Executive Order 11755, signed on December 29, 1973 by President Nixon.[29/] This order replaced Executive Order 325A, signed in 1905 by President Theodore Roosevelt, which prohibited employment of prisoners under state and municipal sentences of hard labor in work on federal contracts, in order to protect the prisoners from exploitation by state correctional authorities with private employers. The new order stresses that parolees, probationers, ex-prisoners and persons who have been pardoned are not prohibited from employment in such contracts. State prisoners are also expressly permitted to be employed on such contracts if certain conditions are met. These conditions provide for consultation with labor union organizations and other provisions to protect the local labor market and the prisoner.

Scope of Prison Industries

State Industries

Several surveys have been made of the variety, numbers and earnings of prison industries. One recent study was conducted by the Battelle Institute in Columbus, Ohio.[30/] The Battelle study was part of a national survey of vocational training in

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29/ Federal Register, Vol. 39, No. 2, Thurs., Jan. 3, 1974.

30/ G. W. Levy, R. A. Abram, D. LaDow, "Vocational Preparation in U.S. Correctional Institutions: A 1974 Survey," report to U. S. Department of Labor (Columbus, Ohio: Battelle Columbus Laboratories; March 1975).

federal and state correctional institutions, funded by the Department of Labor and conducted in 1974. It included a survey of prison industry directors in which they were asked for general information about their industries program and specific information about each industry.

Of the total 560 institutions covered by the study, 424, or 76 percent, responded to the mail survey. One hundred forty-six (35 percent) of the 424 institutions reported having one or more industrial programs, but only 132 returned completed questionnaires.

The 132 institutions reported 407 industries, or an average of three per prison. The most common industry was garment-making (40 institutions), followed by furniture manufacture and repair (31), tag and sign making (29) (but another 11 make license plates only), and printing (25). A number of industries were reported only once--basket-making, foundry, paint brush manufacture, plaster factory, and a quarry among them.

The average state prison industry, according to the Battelle study, employs 42 inmates, but the number of inmate employees in the industries reported ranges from 1 to 475. Their average pay is $ .13 per hour, although prisoners in some states earn no pay. Prison industries directors reported with regard to 84 percent of the industries in their jurisdictions, that most inmates had an opportunity to learn the full range of skills needed for successful performance on a job upon release or parole.

In 1972 the Institute of Criminal Law and Procedure surveyed prison industries for the present report. In this survey, 360 industries were reported by 48 states and the District of Columbia (see Table 2). Two states, Alaska and Arkansas, had no prison industries. Four states reported only one industry: Delaware, Mississippi, Nevada and North Dakota. California reported 17. The industries reported closely paralleled those found by Battelle with a few variations. In both cases, manufacturing industries were reported much more often than service industries.

TABLE 2 - PRISON INDUSTRIES IN 48 STATES*
AND THE DISTRICT OF COLUMBIA

	INDUSTRIES	AL	AZ	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL
GENERAL MANUFACTURING	Auto License (Tag)	X	X	X	X			X	X	X		X	
	Signs		X			X				X		X	X
	Metal Working			X									X
	Metal Furniture							X	X				X
	Wood Furn./Repair & Refin.		X	X		X	X	X	X	X		X	X
	Concrete/Brick Prods.	X							X	X			X
GARMETS	Clothing	X	X	X	X	X		X	X	X			X
	Mattress	X	X		X					X			X
	Knitting			X									X
	Weaving			X									X
	Shoes			X									X
FOOD	Agriculture			X		X			X				X
	Canning	X	X						X	X			
	Butchering			X	X				X				
	Feed												
	Dairy Products			X		X							
SERVICE INDUSTRIES	Dental Lab								X				
	Printing		X	X	X			X		X	X		
	Data Processing					X			X				
	Book Binding			X							X		
	Laundry/Dry Clean.			X		X		X					
	Auto Repair					X							
MISC.	Soap & Deterg.			X	X								X
	Paint												
	Tobacco Products			X					X				X
	Paper Products			X									
	Misc. Others			X		X			X	X			X
	TOTAL:	5	7	17	6	9	1	6	12	9	2	3	14

*Alaska and Arkansas have no prison industries.

TABLE 2 - PRISON INDUSTRIES IN 48 STATES
AND THE DISTRICT OF COLUMBIA (continued)

	INDUSTRIES	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO	MT	NB
GENERAL MANUFACTURING	Auto License (Tag)	X	X		X	X	X	X	X			X	X	X
	Signs	X	X		X	X	X	X	X			X		X
	Metal Working	X		X				X	X					X
	Metal Furniture											X		
	Wood Furn./Repair & Refin.	X	X	X		X		X	X			X		X
	Concrete/Brick Prods.		X				X					X		
GARMETS	Clothing	X	X	X	X			X	X			X		X
	Mattress	X						X						X
	Knitting	X												
	Weaving	X						X	X					
	Shoes	X						X	X			X		
FOOD	Agriculture									X				
	Canning		X		X									
	Butchering				X									
	Feed												X	
	Dairy Products												X	X
SERVICE INDUSTRIES	Dental Lab				X									
	Printing						X			X	X	X	X	X
	Data Processing			X		X								
	Book Binding	X										X		
	Laundry/Dry Clean.								X			X		X
	Auto Repair												X	
MISC.	Soap & Deterg.	X	X	X	X				X			X		X
	Paint		X											
	Tobacco Products	X						X	X			X		
	Paper Products													X
	Misc. Others	X			X				X	X		X	X	
	TOTAL:	13	8	5	8	4	4	9	11	3	1	13	6	11

TABLE 2 - PRISON INDUSTRIES IN 48 STATES
AND THE DISTRICT OF COLUMBIA (continued)

	INDUSTRIES	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI
GENERAL MANUFACTURING	Auto License (Tag)	X	X	X	X			X	X	X		X	X
	Signs			X	X	X	X		X	X			X
	Metal Working					X	X				X	X	
	Metal Furniture			X	X	X							
	Wood Furn./Repair & Refin.		X		X	X				X	X	X	
	Concrete/Brick Prods.		X						X				
GARMETS	Clothing			X		X	X		X	X		X	
	Mattress			X		X	X		X			X	
	Knitting			X		X						X	
	Weaving												
	Shoes			X					X				
FOOD	Agriculture			X									
	Canning								X			X	
	Butchering												
	Feed											X	
	Dairy Products												
SERVICE INDUSTRIES	Dental Lab					X	X						X
	Printing		X	X		X			X				X
	Data Processing											X	
	Book Binding								X				
	Laundry/Dry Clean.					X	X				X		X
	Auto Repair					X	X				X		
MISC.	Soap & Deterg.			X			X		X			X	X
	Paint												
	Tobacco Products												
	Paper Products					X						X	
	Misc. Others			X		X	X					X	X
	TOTAL:	1	4	11	4	13	9	1	10	4	4	12	7

TABLE 2 - PRISON INDUSTRIES IN 48 STATES AND THE DISTRICT OF COLUMBIA (continued)

	INDUSTRIES	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	TOTAL ALL STATES
GENERAL MANUFACTURING	Auto License (Tag)	X	X		X	X	X	X	X	X	X	X	37
	Signs	X				X	X	X	X	X	X	X	30
	Metal Working	X		X					X		X		15
	Metal Furniture								X				8
	Wood Furn./Repair & Refin.	X		X	X	X		X	X	X	X		32
	Concrete/Brick Prods.			X	X					X			13
GARMETS	Clothing	X		X	X			X			X	X	30
	Mattress				X				X				16
	Knitting												6
	Weaving				X			X					7
	Shoes		X	X	X			X					13
FOOD	Agriculture		X										7
	Canning	X			X	X							12
	Butchering					X							6
	Feed							X					3
	Dairy Products		X			X			X				7
SERVICE INDUSTRIES	Dental Lab				X								6
	Printing			X	X	X	X	X			X		24
	Data Processing												5
	Book Binding	X						X			X		8
	Laundry/Dry Clean.	X						X			X		13
	Auto Repair												5
MISC.	Soap & Deterg.			X	X					X			19
	Paint									X			3
	Tobacco Products												7
	Paper Products												5
	Misc. Others		XX	X	X		X		X				23
	TOTAL:	8	6	8	12	7	4	10	8	6	8	3	360

Of a total inmate population of 208,618 in the state correctional systems in the Institute survey, only 17,215, or 8.3 percent of the prison population, were employed in prison industries programs. Through assignment changes and admissions and releases, however, in the course of a year as many as three times that number may be exposed to prison industries work experience.

Federal Prison Industries, Inc.

A higher proportion--almost a quarter[31/]--of Bureau of Prisons inmates work in Federal Prison Industries, Inc. (FPI) than state prison inmates in state prison industrial operations. The most recent available annual report of Federal Prison Industries, Inc., the one for the year ending June 30, 1973[32/] indicates that the corporation operates 49 industries in 21 installations. These include furniture manufacturing or refinishing plants, clothing, shoe, and glove factories, assorted other manufacturing operations for signs, baskets, canvas products, electric cable and textiles, and some service industries, including data processing (keypunching) and print shops--one of which printed the Annual Report.

Sales Figures

In Fiscal Year 1973, the 49 FPI industries produced $54 million worth of goods and services for the U. S. government. Net profits were more than $6.6 million, an increase of a quarter of a million over the previous year. Several inmate-related expenses, of which the largest was $5.2 million for vocational training, reduced the net profit to retained income to $384,039. Still, FPI trained more than 8,000 people and managed to make a profit too.

31/ Jean D. Wolf, "Inmate Employment Programs in Federal and State Correctional Institutions" (Washington: Congressional Research Service, 1973), p. 5.

32/ Federal Prison Industries, Inc., Board of Directors, Annual Report, 1973, March 1974. The corporation is audited annually by both the General Accounting Office and the Department of Justice.

Wages were not high, however. In fiscal year 1973, FPI paid almost $14 million in wages to an average of 4,973 employees, or less than $800 annual pay per person. On a 40-hour a week, 52-week a year schedule, this annual pay rate would average about $ .38 per hour. Although this is low, it is nevertheless almost three times the average rate paid by the states, according to the Battelle study. Some federal inmates work less than a 40-hour week, the difference between their average pay and that of state prison industries workers is even greater.

As for the extent of sales of state prison labor production, the John R. Wald Co., Inc., which has for 50 years advised and supplied correctional industries around the country, has compiled some interesting statistics. In a 1971 report[33] the company compared private industries with correctional industries, where "industry" is defined as including "an operation which serves at least one other institution in addition to the institution in which it is located."[34] In 1970, products manufactured by correctional state use industries were valued at less than three hundredths of a percent of the value of all privately manufactured products. Thus, laws restricting markets and production have combined with other factors to leave to prisoners just a sliver of the GNP.[35]

33/ Correctional Industries, State Use Sales, 1950-1960-1970, 1971.

34/ Ibid., Preface.

35/ Neil Singer has estimated the economic loss to society produced by underusing prison labor at between $1 billion and $1.5 billion annually. The Value of Adult Inmate Manpower (Washington: American Bar Association Center for Correctional Economics, Nov. 1973).

III. THE CONFLICTING GOALS OF PRISON INDUSTRIES

Legal restrictions on prison industry production and marketing limit the potential of prison industrial experience to provide relevant work backgrounds to prisoners before release. In this way, they conflict with a frequently identified goal of prison industries: "rehabilitation," or preparation of inmates for a successful law-abiding life after release. At least two other major obstacles to achievement of this goal can be identified: 1) fundamental disagreement as to appropriate, achievable goals for prisons and prison industry programs, and 2) characteristics of the traditional prison industries as they now operate.

Of these obstacles,the more serious is probably the lack of agreement among corrections personnel and in society as to the purposes of incarceration. Length of incarceration, the treatment of prisoners during incarceration and the initial decision to incarcerate or not, are all affected by the emphasis one places on deterrence, one's notions about how people are changed for the better, the root causes of crime, and many other beliefs formed on rational or emotional grounds. Corrections will continue to accomplish little until a greater unity of purpose is achieved.

Those who agree on the purposes of corrections may still cast correctional industries in different roles. Recognizing the harmful effects a lack of agreement on prison industry goal priorities can have on implementation of effective programs, the University of Iowa Center for Labor and Management conducted a study of varying groups' perceptions of these goals. It published the results of the 18-month study, The Role of Correctional Industries,[36] in 1971. "The principal concern of the study," according to the report,"was to determine how the role of correctional industries is defined by corrections personnel. A second concern was the public's perception of the role."[37]

36/ Jude P. West and John R. Stratton, eds. (Iowa City, Iowa: University of Iowa Center for Labor and Management, 1971). The report is a compendium of attitudinal information that is extremely valuable to the correctional industries planner.

37/ Ibid., p. 1.

The study asked the subject groups which prison industry goals they considered most important from a list of 16 goals often associated with prison industries.[38/]

Broadly, four of the goals had to do with rehabilitation, or improvements in the inmate's ability to succeed after release; the next five concerned responsibilities or needs that could be met by the inmate through earning money; the tenth reason--to secure job placement for inmates--did not appear to have as direct a relationship to a prison industries program

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38/ The sixteen goals are listed by West and Stratton on pp. 208-9 as follows:

1. To provide each inmate employed in industries with a high level of vocational skill.

2. To develop in each inmate employed in industries a set of attitudes favorable toward work and the work situation.

3. To develop in each inmate employed in industries the minimum qualifications necessary to hold a job. (i.e., general job skills; the ability to follow instructions, follow safety rules, etc.)

4. To develop in each inmate employed in industries attitudes favorable to living a law-abiding life.

5. To provide inmates with the opportunity to accumulate sufficient savings to "tide them over" upon release until they are established in a stable employment situation.

6. To help inmates earn sufficient funds for paying outstanding fines, court costs, or restitution to their victims.

7. To aid inmates in paying off or making payment on outstanding debts.

8. To enable the inmate to contribute to the support of his family while he is incarcerated.

(footnote continued)

as the others, since this function could be carried out by a separate component of the correctional administration. The eleventh goal listed--to supplement other programs--was vague enough to include other goals. Four goals (numbers 12, 14, 15 and 16) concerned taxpayers' savings and the remaining goal was constructive occupation of inmates' time--i.e., fighting idleness.

The study surveyed high-level corrections administrators and correctional industries personnel in every state and the District of Columbia. Responses were received from 41 industries people and 44 administrators for a total response rate of 83 percent.

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9. To provide the inmate with sufficient funds to make commissary purchases.

10. To secure job placement for inmates about to be released.

11. To serve as a supplement to other institutional programs.

12. To help underwrite the cost of the total correctional program.

13. To constructively occupy the time of the inmate population.

14. To provide quality goods for the available markets in the state.

15. To provide low cost goods for the available markets in the state.

16. To make a profit.

The highest priorities[39] were given by both groups to developing favorable work attitudes in the inmates (goal number 2). Second and third priority were given by both groups for the same two goals, but in reverse order. The industries personnel put development of attitudes favorable to living a law-abiding life second, while the administrators put development of minimum qualifications necessary to hold a job (general job skills) second. Fourth for both groups of respondents was job placement for inmates about to be released--something that is rarely, if ever, included in an industries program. All four of these goals can be characterized as "rehabilitative."

Thus, "rehabilitation" was considered the most important goal of prison industries by corrections administrators and industries personnel. The characteristics of most prison industries operations today, however, bode ill for achievement of this goal. Prison industries today--whether from lack of adequate funding, legal restrictions, administrative expediency, or a combination of these reasons--are characterized by 1) production for limited markets, 2) outdated equipment, 3) labor-

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39/ The average ratings for the 16 goals are given in ibid., Table 1, pp. 137-139.

In the Battelle study mentioned in Chapter II, directors of prison industries programs were asked to rank seven suggested goals for prison industries from one to seven. They were thus forced to identify a first choice, second, etc., which respondents to the Iowa study did not have to do. There was very high agreement again on rehabilitative goals as the most important goals of prison industries. First ranking was "develop inmate's work habits" which 43.8 percent of the respondents ranked number one. Second highest was "develop specific job skills for employment on release" (ranked first by 35.2 percent of the respondents). The lowest-ranking goals were "produce a quality product at a profit" and "reduce cost of incarceration to state."

intensiveness, 4) low-skill jobs, 5) short days and over-assignment, 6) lack of competition for jobs, 7) poor management, and 8) low pay for inmates. All of these characteristics are dysfunctional for inmate rehabilitation--that is, preparation for a self-supporting non-criminal life after release--and some are dysfunctional for other industries goals as well.

1. Limited Markets.

As noted above, virtually every state, as well as the federal system, has legislation restricting those to whom the products of prison labor may be sold. These laws, as well as those requiring diversification in industry and other laws designed to protect private industry, limit the types of prison industries options, resulting ultimately in prison industrial experience that may have limited application outside the wall. Classic examples of this problem are the tag shops found in prisons in 36 states. Although there may be (as has been argued) some transferability of experience in making license plates to other types of metal and sign work, an obviously better experience for inmates who hope to find work in such factories after release would be training in the same, not a "similar" industry.

2. Outdated Equipment.

Prisons are typically not well-endowed in the state budgetary process, and within corrections, industries may be the most ignored component. The financial outlay that would be required to outfit prison industries with up-to-date equipment is therefore not made. The failure to make this expenditure is easily justified on two grounds. First, the cost of machinery may be very high in relation to the number of inmates who would use it.[40/] If training of inmates (whether in general job skills or for a specific job after release) or reduction of inmate idleness is a primary goal of the industries program, the high expense is not justified. On the other hand, if increased profits are the primary goal, expensive equipment may pay for itself.

40/ One of the authors recently visited an institution in which a machine to coat license tags with light-reflecting paint had been installed not long before at a cost of about a quarter of a million dollars.

Second, one might argue, an industry with a guaranteed market need not compete for business with up-to-date commercial manufacturers and therefore does not need up-to-date equipment. The premise of this argument may be false, as the state-use market is not really guaranteed to prison manufacturing operations. State agency procurement officers are able to circumvent laws in favor of consumption of prison products by demanding delivery too early for prison schedules or by requesting specifications that the prison cannot meet. The latter would be likely to occur more and more often as prison machinery aged and industries fell further behind commercial manufacturers in what they could offer customers. Failure to replace outdated equipment, therefore, will have the effect of keeping prison capital expenditures down and excess labor use up, and will protect private industry and labor by keeping prison products from being competitive.

This feature of correctional industries is dysfunctional for post-release job success, since experience on obsolete equipment has little or no relevance to employment in private industry. Inmates who are experienced on such equipment will know that their skills are not comparable to those of men working in similar factories with modern equipment. Both their lack of relevant experience and skills and their resulting lack of confidence will hinder them in their job search.

3. Labor-intensiveness

Many prison industries are labor-intensive. Labor-intensiveness, or use of human effort rather than mechanization, is not in itself indicative of poor inmate job training. Professional work could be characterized as labor-intensive. But in prisons, where most industries manufacture products, labor-intensiveness is a condition that can exist only because there is an ample supply of cheap labor. Ordinary industries seek to reduce labor costs as much as possible. Although labor-intensive prison industries are able to accommodate greater numbers of inmates assigned to them, they provide experience that is largely irrelevant to the outside, hence experience that is not good skill training and which reduces confidence.

4. Low Skill Jobs.

For several reasons, prison industries tend to be those which can employ inmates at low skill levels. Among these reasons are 1) the low educational achievement and poor skill levels of most inmates, 2) the relatively short lengths of stay of many inmates in the correctional system, 3) the practical difficulty of scheduling some inmates for promotion and training at increasingly advanced skill levels while continuing to supervise lower-skill personnel with the same numbers of industries staff. An additional reason is that industries can be a "dumping ground." Inmates who do not succeed in a non-industries work assignment (perhaps because of personality conflicts with the supervisor) may be assigned to industries.

Since most prison industries neither require nor train highly-skilled inmates, inmates may leave an industry little better prepared for work in that industry outside the wall than when they entered. Furthermore, where skill levels are low, there is more opportunity for standards to be lax. Precision, an important quality in higher-skill jobs, is not of primary importance in most prison industries. Inmate self-esteem is not raised by this sort of experience, so that inmates seeking work in their industry after release will have no new measure of confidence to help them over the stigma of imprisonment.

5. Short Working Days and Overassignment of Workers.

Correctional institutions are often overcrowded and understaffed at the same time. The most heavily-staffed shift is likely to be the day shift, which may get off work at 3:00, 3:30, or 4:00 in the afternoon. Industries personnel may or may not work the same shift hours as the correctional force, but where the correctional force is short in numbers, security or labor union considerations may compel administrators to end the work day when the security day shift leaves.

Security matters are not the only concerns that may reduce an inmate's work time. He/she may have visitors, therapy programs, or classes. Furthermore, since in most institutions all inmates eat in the same dining hall, one to two hours may be set aside for "feeding." Many institutions have two or three daytime counts, which can cut into work

time for inmates. These administrative matters reduce the prison industries work day to as little as four and seldom more than six hours--although the industries supervisors, who are civil servants, work an eight-hour day.

An additional problem with most correctional industries facilities is overassignment. Presence of two or three inmates to do a one-man job reduces an individual inmate's exposure to constructive work far below the time he is on the industry premises. Although this is more likely to occur with maintenance and culinary work forces, it happens in industries as well. In such cases, the institutional "need" to assign inmates has clearly been given priority over the potential value of industries experience to inmates.

6. Lack of competition for jobs.

The means by which prison industries jobs are acquired and kept have almost nothing to do with competition. The fact that administrators may be able to assign to industries inmates who have dropped out of or been asked to leave other programs is an aid to reducing the number of non-programmed inmates, but competition for hiring and promition is a fact of real-world industries for which prison industries provide almost no preparation.

7. Management Isolated from Industry.

Prison industries managers work in the context of prisons. They are accustomed to intrusions by the prison administration with regard to which workers they will have, when they will have them, and the incentives they can provide. Industries managers and supervisors eat lunch with correctional personnel, attend meetings with the superintendent, and feel the effects of prison disturbances.

In every way, then, prison industries management is closely related to corrections management. Industries programs may have a distinct budget allocation and deal with suppliers and customers outside the corrections system, but in general the orientation of prison industries personnel is toward the prison in which they are located. They are, therefore, isolated. They are isolated not only from the problems of ordinary business operations, such as keeping a supply

of reliable labor and the danger of business failure through inability to meet production standards, strike or natural disaster, but also from simple contact with ordinary business operations. Prison industries have their own markets and have therefore little need for relationships competitive or otherwise with other industries of the same type.

For these reasons, prison industries personnel cannot provide much aid on a personal level to inmates seeking jobs outside the walls in similar industries. The isolation of prison industries managers also keeps them from being aware of new technology and ideas in their fields. They are in a strange situation--"responsible" to the correctional system rather than to their customers. This allegiance affects virtually every action taken in correctional industries.

8. Low pay.

The Battelle study mentioned in Chapter II found that average pay for state inmates employed in industries was 13 cents per hour. Another study[41] published in 1974 found that in six states no inmates received pay for industries employment. (In some cases the only way to earn money was by selling crafts, donating blood or submitting to medical experimentation.) In an additional four states only ten percent or less of the inmate population was paid for either industries employment or institutional maintenance.[42]

The practice of paying inmates low or no wages has the obvious effect of saving money for the government (although perhaps less than may be immediately evident), and keeps production costs at a minimum. It may also keep production at a minimum due to the lack of motivation to work for higher pay. The practice has other undesirable effects. It renders prisoners unable to send any significant amounts of money

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41/ Kenneth J. Lenihan, "The Financial Resources of Released Prisoners" (Washington: Bureau of Social Science Research, Inc., March, 1974).

42/ Ibid., p. 10.

home to keep their families together and off welfare, unable to pay bills incurred before incarceration, unable to contribute to victim restitution, unable to pay fines, etc. These kinds of helplessness further demoralize the prisoner, reducing his or her fitness for living a non-criminal life after release.

The relationship between the characteristics of most prison industries today and several goals for prison industries can be depicted on a matrix. Table 3 shows which characteristics of prison industries are functional (F) or "good" for the goals listed and which are dysfunctional (D) or "bad."

As the matrix illustrates, not a single one of the identified features characterizing most prison industries is functional for the achievement of any of the four goals listed as favorable for inmates, i.e., for "rehabilitation." Few characteristics are dysfunctional for the institution-related goals and the goals related to the outside community.

The many goals of prison industries, therefore, are in conflict with each other. Those favored by the characteristics of most prison industries are not the goals that have been identified by corrections personnel and others[43] as most important. But the conflicts go further than an inconsistency

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43/ The Constitution of the Correctional Industries Association, a 2000-member organization of correctional industries personnel, gives the C.I.A. purpose in Art. II, Sec. 2, as follows:

> 2. The primary interest and concern of the Association and its membership shall be to aid in the rehabilitation of inmates of correctional institutions by offering on-the-job training through constructive employment opportunity in sound industrial programs where carry-over training, quality control, efficiency of operation and a reasonable return are considerations.

TABLE 3 - RELATIONSHIPS OF PRISON INDUSTRIES GOALS AND CHARACTERISTICS (ILLUSTRATING CONFLICTS AMONG GOALS)

CHARACTERISTICS OF PRISON INDUSTRIES

F = Functional; D = Dysfunctional; Blank = No effect

GOALS	Limited Markets	Outdated Equipment	Labor-Intensiveness	Low Skill Jobs	Short Days/Over-Assignment	Lack of Competition for Jobs	Managem't. Isolated from Industry	Low Pay
Institution-Related								
1. Reduction of idleness			F		F	F		
2. Reduction of expenses		F		F				F
3. Increased profitability		D			D		D	F
Inmate-Related								
4. Skill training	D	D	D	D	D		D	
5. Work habit (and attitude) training		D			D	D	D	D
6. Income for personal needs								D
7. Self-esteem and confidence raising		D	D	D	D	D		D
Other-Related								
8. Money for families and creditors								D
9. Avoidance of conflict with commercial interests and labor groups	F	F		F				D
10. Cheaper goods for state use	F							F

between policy and practice. Prison industries exist in the context of correctional systems whose goals are in conflict: e.g., preparation of inmates for a law-abiding life after release, which may be best achieved through individual treatment and allowance of greater numbers of opportunities for inmates to make their own decisions, conflicts with the need to protect the taxpayer by keeping costs down through routinization. And, the corrections system itself exists in the context of a society that wants reductions in recidivism but is hesitant about "risking" early release of prisoners to ensure a smoother transition between institutional and community life.

The prison industry program exists in a human context, too. Prison staff members who cannot agree with institutional policies and programs can subtly sabotage them. While it is not the function of a corrections department to provide a satisfying work experience to its employees, the department that can do so while striving to attain its real goals will have a much greater chance of achieving them. If maximization of several goals is perceived as consistent, it is more likely to occur.

In summary, although there is general agreement among corrections and industries personnel that the primary goal of prison industries should be "rehabilitation," the characteristics of prison industries as they are found generally around the country do not promote this goal. In fact, in most cases the characteristics of prison industries hinder the preparation of inmates for a self-supporting, non-criminal life after release.

IV. MEETING THE GOALS OF PRISON INDUSTRIES

Rethinking the Goals

The question is raised, "How can the goals of prison industries as identified by correctional administrators and industries personnel best be met?" That is, how can prison industries be made functional for preparing inmates for life after release? How can they provide skill training, improve inmates' work habits and attitudes, help prisoners accumulate a financial reserve, and foster growth in self-esteem and confidence?

A radical response to this question, but one worth examining, is to say the question is irrelevant. Ordinary businesses are not evaluated on the basis of their impact on their employees. If one asks "What is the purpose of industries?" (as opposed to prison industries) few would hesitate to respond "To make a profit." Yet, as soon as the question is asked about prison industries, businesslike considerations are out the window, and the goals of corrections are suddenly relevant.

Prison industries are viewed as a program for prisoners. When seen as a program, industries are evaluated for their contribution to achievement of correctional goals, which are themselves often fuzzily defined and therefore unattainable. Despite the priority of rehabilitation as a correctional goal, for example, no one has yet produced a workable technique for measuring rehabilitation before release. Parole boards take their "chances," erring on the side of denying parole when in doubt. Prisoners serving indeterminate sentences may remain incarcerated longer than they would have if sentenced under "stricter" laws--because corrections personnel cannot tell when they are "rehabilitated" and should be released.

A possible alternative approach to prison industries is to evaluate them as industries rather than as correctional programs. There may be increasing support for this approach as more and more people recognize that "rehabilitation"--the most popular goal of corrections and of prison industries--is not only difficult to identify, but perhaps also impossible to produce.[44/]

44/ Robert Martinson, "What Works?--Questions and Answers about Prison Reform." (Public Interest, Spring, 1974, pp. 22).

Whatever rehabilitation occurs in prison is likely to be a product of individual self-improvement efforts by prisoners bearing no relationship to the programs they are in. Thus, another purpose for prison industries should be found: simulation of outside industries.

What would prison industries look like if they were operated as businesses? First, it is clear that most of the characteristics of traditional prison industries would not be tolerated in a business. A profit-oriented industry would strive to grab as large a part of the market as possible; outdated equipment would be scrapped or replaced as soon as possible; employees would be expected to work a full eight-hour day; there would be no superfluous employees; new developments in the industry would be watched, and new techniques adopted so that the industry could remain competitive.

In a real business, low-skill jobs would be held by only some of the employees; others would keep accounts, manage inventory, project sales, explore new markets, and so on. And of course, because of minimum wage laws and union contracts, wages in an ordinary industry could never be so low as they are in prison.

If prison industries were first and foremost <u>industries</u> rather than correctional <u>programs</u>, their operation would be vastly different. Some of the differences are listed below:

1. Different people would have primary responsibility for industries planning;

2. Accurate cost information would be obtained (possibly requiring a recasting of the correctional budget to reflect how much is spent on industries);

3. New product and service markets would be identified (as opposed to <u>job</u> markets, which would be identified in the rehabilitation approach to prison industries, but which would be unsuitable for the profit orientation);

4. Industries would provide incentives to workers to maintain a high level of productivity (and company income).

These points are elaborated below.

1. Different people as planners.

Prison industries are presently operated as a component of the corrections system, whose administrators are correctional personnel who have risen through the correctional or treatment ranks. Industries supervisors are subordinate employees of these administrators, and as such, have no particular weight in decision-making, even when it concerns their area of expertise and operations.

This point has been noticed by some industries personnel. The California Department of Corrections Industries General Manager in 1974 prepared a position paper stating that "... there must be some commitment on the part of the department to recognition of unique problems of Correctional Industries and to acceptance of Correctional Industries staff as full partners with particular emphasis on participation in the decision-making process of the department."[45/] In short, skilled personnel hired to run prison industries should be permitted to do their job as well as possible.

2. Accurate cost information.

It is virtually impossible to discover how much the average state's correctional industries operation costs. While expenditures for materials, depreciation on machines, salaries of industrial supervisors, wages to inmates and other financial data may be easily identified, many costs of industries are lost in the typical budget. Take, for example, the initial capital investment, land, plant, equipment, and the overhead attributable to industries--utilities and plant maintenance. In a real business these costs or subsidies would be known,

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45/ Robert H. Lawson, "The Role of Correctional Industries" (California Department of Corrections Position Paper, Feb. 11, 1974), p. 2. On page 1 of that paper, Mr. Lawson says "...the lack of involvement of Industries' staff in the department decision-making process (has) too often resulted in Correctional Industries being forced to react and take appropriate steps only after departmental or institutional decisions (have) been made. That Industries has been able to maintain its financial solvency during this period is high tribute to its staff."

or at least estimated, and considered as part of the analysis needed as a foundation for planning. Cash flow requirements would be identified. Unnecessary expenditures (such as those caused by hiring too many workers) would be identified so that they could be eliminated.

After the cost information was known, income figures would have meaning. The level of profit or loss would be known, competitive pricing could be put into effect. Decisions could be made as to how much money could be devoted to development of new markets, diversification of product lines, and so on.

3. New product and service markets would be identified.

For the most part, prison industries markets today are established. Industries grind out a regular supply of uniforms, flags, furniture, brooms and license plates for government (or other tax-exempt) clients. Expansion of the customer roster is undertaken hesitantly for political reasons--antagonizing private industry and labor will accomplish no useful goal for industries.

Prison industries are in a delicate position. They are subsidized by taxes, and can have an unfair pricing advantage over private industry. Nevertheless, they supply today only a fraction of the market legally available to them. In some cases, expansion of this market would not involve competition with in-state industries.[46/] In such cases, if prison industries can make a quality product or provide satisfactory service at prices in the market range, why should they not try to expand their marketing? Furthermore, liaisons with private industry may make in-state competition politically feasible.

46/ In South Carolina, for example, of an annual $2 1/2 million printing expenditure by state agencies, $1 million goes out of state. Telephone communication with Robert L. Sanders, Jr., Project Director, South Carolina Correctional Industries Feasibility Study, March 17, 1975.

4. Incentives to workers

Most prison industries today offer little to their inmate workers. Beyond cigarette money, something to occupy their time, and perhaps a vehicle for getting a good report in the central file that might help at parole time, industries hold out little promise or threat. Inmates are rarely "fired" from industries--certainly not for lack of productivity. Nor do they stand to gain much positive for being productive.

Private industry could not remain solvent in such lackadaisical circumstances. Positive and negative incentives would be employed to bring workers to a level of production that would keep the business viable.

It is ironic that in corrections, where token economies have sprung up in a number of institutions (usually those for young or juvenile offenders), real economics plays such a minor role. The value of fair pay as a concomitant to and natural result of productivity is recognized outside the wall--work releasees are paid ordinary wages, for example--so why not inside? Obviously, payment of the minimum wage to prisoners is unfeasible in the absence of other profound changes in prison industries, and in the employment of prisoners in prison operations and maintenance, but it should be possible if other changes are made.

Payment of the minimum wage to prisoners is a controversial proposal, but one made often. As such, it merits further discussion.

The theory behind the minimum wage proposal is that inmates, like other people, should be paid fair wages for work done. It is believed that higher wages will improve inmates' self-esteem and provide an incentive to work harder (particularly if inmates must compete for jobs). Inmates will have sufficient funds for their own use (precluding unhealthy financial dependence on other inmates), will be able to send more money home for their families and to pay debts, and will be able to save money for use at release. Some of these benefits are

speculative. Minimum wage proposals have always specified that the inmates affected would pay for room, board, clothing and related personal care at their prison.

Among the groups which have proposed payment of minimum wages or prevailing wages (the going rate for that type of work in the area) are the National Advisory Commission on Criminal Justice Standards and Goals (in its Corrections Standard No. 11:10),[47] The National Council on Crime and Delinquency[48] and the California Assembly.[49]

The Correctional Industries Association has not been enthusiastic about the idea, however. One former president of the C.I.A. and former Assistant Commissioner of Federal Prison Industries, Inc., has made the following arguments against payment of minimum wages to prisoners.[50]

1. Inmate industrial wages are presently classified as a gratuity not subject to taxation. To raise this pay to the minimum wage level would create a number of administrative problems.

2. Payment of minimum wages would reduce profits available to put toward support of vocational training and other programs.

47/ National Advisory Commission on Criminal Justice Standards and Goals, Corrections, 1973, p. 387.

48/ NCCD, Policies and Background Information, Sept. 1972, p. 9. The policy was adopted by the NCCD Trustees on April 25, 1972.

49/ Assembly Office of Research, Report on the Economic Status and Rehabilitative Value of California Correctional Industries. (Sacramento: California Legislature, 1969), pp. 28-9.

50/ T. Wade Markley, writing in the Correctional Industries Association Newsletter, May 1974, pp. 7-8.

3. If unskilled inmates are paid the minimum wage, higher skilled inmates should be paid more so that there will be an incentive to work for promotion. This becomes an expensive proposition.

4. Deciding on the pay to be given maintenance workers would be difficult. Too great a gap between pay for industrial workers and pay for maintenance and training will cause friction among groups of inmates.[51]

The first point above, regarding the administrative problems that would be created by paying inmates taxable wages, has to do with bookkeeping and accounting procedures. The problems created are no greater than, and no different from, those of a personnel system under which employees' wages are subject to withholding and other deductions. Additional personnel may be required to calculate these figures, make tax payments to the government, and post the wages and deductions to inmates' accounts, but beyond the additional time involved, the problems are not new and not insoluble. Properly supervised inmates could be used for some of the work involved.

51/ Another point not made by Markley, but appropriate here, is the possibility seen by some correctional administrators that inmates will stop enrolling in educational programs if industries workers are much better paid than students. Telephone conversation with Dr. Robert Rommel, New York Division of Correctional Services, October 24, 1974. The arguments to be made on the other side are that inmates will not be able to choose an industries assignment at will if all the conditions necessary to payment of the minimum wage exist--they will be hired only if qualified and only if a vacancy exists. A more basic counter-argument is that inmates should be permitted to opt for any activity available to them that they see as being in their own best interest (assuming it is legal, of course). Why should correctional administrators be permitted to "help" inmates by manipulating them into education programs they don't want?

The remaining three points--reduction of profits and disparate pay rates for different groups by skill assignment, can be discussed together. The point that the reduction of profits caused by payment of the minimum wage would leave less money for programs such as vocational training (which currently takes the lion's share of Federal Prison Industries, Inc.'s sizable profits) highlights the unreality of prison industries. Industries profits are returned to the government, unless they are used in non-industries functions. Is that use of profits appropriate? Why not simply increase wages, increase incentives and increase production? Why not, as a matter of administrative policy, decide the level of subsidy acceptable for prison industries and permit the industry to share profits with inmate employees until minimum wage levels are achieved and appropriate bonuses paid? Additional excess, undistributed profits can be used to reduce the amount of subsidy.

Likewise, the issue of disparity in pay among industries workers according to level of skill and seniority, and between them and others is complex and politically charged. Insofar as the funds for paying non-industry workers comes from industry profits, this issue is the same as the last one. But other considerations, such as the genuine value to the prison of maintenance service performed by inmates, also come into play. Inmates in maintenance work should be compensated for their work, but should their compensation be taken from industries profits, destroying the integrity of industries? Probably an appropriation should be made for the purpose of paying these workers fair wages for work done. Special appropriations are now made in a number of states for nominal inmate pay in prison maintenance jobs.[52/] These matters cannot be decided easily, but neither should the difficulty of deciding them preclude payment of fair wages to all who do productive work in prison.

Summarizing these points, it appears possible that correctional administrators who take a novel approach to prison industries--seeing them as industries, work for prisoners, rather than a correctional rehabilitative program--can provide a productive work experience to a proportion of their inmates. It

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52/ National survey data on this point are not available. The authors of this report know of budgeted General fund appropriations for inmate pay in California, Maryland and Massachusetts.

is possible that this experience will have therapeutic value, just as real work on the outside can produce significant psychological, as well as financial, benefits, but therapy can be only an incidental benefit of an effective prison industry.

Implementation of New Goals

Some noteworthy efforts have been made by corrections departments to improve their industries along the lines described in this chapter. One such state is South Carolina. Its recent "Correctional Industries Feasibility Study" had as its goal the development of a detailed implementation plan for a prison industries program that would provide inmates with

1. Fair wages for their work (that is, wages comparable to those paid in the private sector for similar work tasks);

2. On-the-job experience in a modern, efficient industrial or service operations; and

3. Meaningful vocational training which instills a skill demanded in the civilian labor market.[53]

One idea behind the study was that if such a program could be made economically viable, rehabilitation would be a "natural byproduct."[54] In describing the impact of the program financially, the Project Director pointed out that everyone would benefit from the payment of fair wages:[55]

> For example, if an inmate is paid at an hourly rate of $2.50 per hour, he will earn $5,200 per year. Of this, we can expect $1,460 to be reimbursed to the Department of Corrections, $500 toward federal taxes, $100 in state taxes, $300 in

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53/ Robert L. Sanders, Jr., Project Director, in Correctional Industries Association Newsletter, Oct. 1974, p. 4.

54/ Ibid.

55/ Sanders, op. cit., p. 5.

social security, $1,270 to his dependents, and $520 to his victim. $1,050, or approximately $20 per week, will be the estimated amount of net take-home pay for the inmate.

The South Carolina study took a comprehensive approach, including a review of legal restrictions on correctional industries as well as a business audit of existing correctional industries and a market opportunity analysis to identify new product or service fields that would be feasible as correctional industries in the state. 56/

The consulting firm that worked with the Department of Corrections on the study concluded that there was a realistic way to meet the goals set out by the Department. The program was described briefly by the consultant: 57/

> [O]ur firm, along with the South Carolina Department of Corrections, took the Department's idea of paying competitive wages to inmates and analyzed and evaluated all possible methods of accomplishing this goal. The results were a suggested program that would induce national corporations to establish manufacturing operations within commuting distance of selected Department of Corrections facilities and, after a thorough training program with the state's excellent technical education program, these firms would hire at prevailing wages qualified inmates. The Department of Corrections would be required to provide and pay for all security at each facility

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56/ The results of the latter two components are available from the South Carolina Department of Corrections in two reports: "Phase I, A Business Audit," and "Phase II, Market Opportunities Analysis." The reports, which are about 150 pages long, are also summarized in "The Correctional Industries Feasibility Study Market Research Phase, A Summary of Conclusions and Recommendations." Further information may be obtained from the Project Director, Robert L. Sanders, Jr., at (803) 758-6300.

57/ William B. McGill, Jr., in Correctional Industries Association Newsletter, Jan. 1975, p. 2.

and the inmates working at these complexes would be required to pay all state, local and national taxes, social security; room and board at the facility; plus support their families and meet all legal obligations.

New York state, too, has taken steps toward partnership with private industry in correctional industries development. New York has contracted with two corporations for assistance in designing and setting up training of inmates and, in one case, for the establishment of a free-world factory in an institution, using inmate/workers to produce products to be sold commercially. These workers are to receive skill training and perform tasks for which there is a high present and projected demand in New York state industry. (Aside from this experiment, however, most of the many prison industries in the state operate in the traditional manner.)

New York state has taken other steps to improve industries. Two of these are

- Operation of a second shift in several industries. One of these is the metal working factory in Attica. Inmates volunteer for this shift, and profits are higher than for the day shift.58/

- Contracting with a consulting firm to prepare a labor market analysis of New York state and a review of the prison industries existing to make recommendations regarding the phasing out of some industries and establishment of others. The study has been completed, but has not yet been released by the Department.

Finally, another effort worth mentioning was an attempt by the District of Columbia Department of Corrections to establish cooperative relationships among the correctional

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58/ Inmate pay is also a little higher, although it is less than the maximum permitted under the departmental policy in order "to maintain worker incentive." One would think the introduction of profit-sharing would be a better incentive.

industries programs of six contiguous states and the U.S. Bureau of Prisons. A proposal endorsed by these jurisdictions and made to the Law Enforcement Assistance Administration in 1971 stated the goals of the project as follows:

> "...to explore and define those phases of correctional industries and offender employment programs that will benefit most from the cooperative efforts of the state correctional agencies in the region, as well as from cooperation with Federal Prison Industries, Inc."

Among the areas to be explored were

- "establishment of private industries and full wages in corrections"
- "creation of a 'correctional common market'"
- "contracting and subcontracting on industries' orders for goods and services (among) the correctional systems.59/

Although the project was not funded, the idea should be remembered. The kinds of cooperative relationships that can be forged in a region can benefit many. For example, if industries operations are reduced in number but increased in size and efficiency, state agencies will benefit from being supplied higher-quality products, and inmates will benefit from working in industries that are more like those in the real world.

Private industry involvement can play a role in improving these industries with their regional market, and conversely, a regional association of corrections departments determined to make improvements has more resources to draw on in contracting with private industry.

59/ District of Columbia, Department of Corrections, Application for Discretionary Grant. "Multi-Area Correctional Industry and Offender Placement Program," June, 1971.

These approaches to redesigning prison industries programs hold lessons for other corrections departments. Other states may begin in other ways, such as through legislative changes or administrative modifications that require no appropriations. For political and economic reasons, an approach that is feasible in one state may be totally inappropriate to another.

Some information that could help a department reform its industries program is not available. Government and private funding agencies can play a role in assuring that it will be available in the future through the support of research into a) public acceptance of community-based programs, b) the impact of hard, productive and relevant institutional work experience on recidivism, c) techniques for involving businessmen and organized labor in correctional programs, and d) whether that sort of involvement improves job placement after release.

V. PRISON INDUSTRIES IN THE FUTURE

States vary in the sizes of their prison populations, the proportions of the state populations that are incarcerated, their cultural values, judicial philosophies, legislative leanings, and in many other ways that will have an effect on prison industries planning. These differences must be taken into account as correctional administrators and others map the steps appropriate for improving prison industries.

It is in some ways easier to predict the remote future than the near future. Predictions of the remote future can bestow on some societal movements the title "trend" and ignore others as short-term flurries. Predictions of the remote future are enjoyable to make and can be made without fear of responsibility for errors, but they have an important function too.

It is human to try to peer into the future, and what we see there is one piece of information that must be added to many others in the planning process. It forces planners to decide whether they want to go with the trend. Only if we know where we want to be in the future can there be any sense of direction, organization of priorities and allocation of effort expended today.

Among those who have been predicting what the prisons and prison industries of the future would look like is the Center for the Study of Democratic Institutions. In 1974, the Center reported on an "enquiry" it made into Criminal Justice in 2000 A.D.[60/] The enquiry was a conference at which various people in criminal justice fields spoke.

The Center concluded that maximum security institutions would be fewer in number and that they would house only the "hardcore incorrigibles." The predictions regarding industries

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60/ Center Report, October 1974. The prediction section was only a part of the total enquiry into criminal justice.

and work programs are short enough to quote in full:[61]

> ...the element of "slave labor" will diminish. Leiberg and others predict that prisoners will receive "free-world" wages for work done. Outside industrial and trade unions may extend their jurisdictions into prisons, giving inmates the chance to become members. This, of course, will vastly increase the ex-convict's opportunities for employment once he is out of prison. Outside corporations, predicts Greenberg, will manage prison industries.
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> In an effort to counter a national prisoner's union movement, Greenberg feels administrators will encourage outside unions: "Outside, trade-oriented unions will confine their attention to economic issues, will direct their opposition to the corporations running prison industries, not to the prison administration, and will divide prisoners on occupational lines." Besides union scale wages, prisoner-workers also will get social security, workmen's compensation, unemployment insurance, and social services they would be entitled to in their home communities. As a balance to increased money and benefits, prisoners will pay the State or Federal institution for their room and board. Wages will also go to compensate victims, contribute to family support, and for savings. Greenberg predicts that recidivism may be reduced as a result of improved vocational skills, union membership, and enough savings to tide a released prisoner over a period of job-seeking.

All of these predictions are believable in the context of work in progress in South Carolina, New York, Iowa, California and other states.

61/ Ibid., p. 23.

Dr. David Fogel, former Commissioner of Corrections in Minnesota, now head of the State Planning Agency in Illinois, has also done a great deal of thinking about the profile of prisons in the future. He has in a sense gone beyond the year 2000 by postulating the "ideal" correctional system as part of a study he is conducting for the Law Enforcement Assistance Administration.

In Fogel's idealization, "the prison sentence should merely represent a deprivation of liberty. All the rights accorded free citizens but consistent with mass living and the execution of a sentence restricting the freedom of movement, should follow a prisoner into prison." 62/

Prison industries in this context would be entered voluntarily. An industry that could not attract workers would not exist. This orientation requires that the industries be flexible. "A few assembly type, collapsible work enterprises at prevailing rates are attractive. With such a system, when the market dries up we will not be left with an obsolete prison factory coupled with legislative demands requiring servile labor to produce revenue."63/

Fogel's vision includes payments to the government by the earning prisoners, as well as to victims, their families, etc. "The prisoner is thereby offered the dignified status of remaining head of household while doing a prison term. The convict, as a resident should only be expected to take care of his immediate household chores without pay."64/

Those who are willing to predict the shape of corrections in the future, then, agree that prisons will be smaller and

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62/ Ibid., p. 27. Although the results of the study are not yet available generally, he has made some of his conclusions about industries programs available to us.

63/ Ibid., p. 86.

64/ Ibid., p. 87.

will house only the toughest convicts. Programs will be geared to meet their needs, in such a way that they do not infringe on prisoners' rights. The needs which will be met by industries programs will be financial (through payment of minimum wage or prevailing wage) and occupational (through a real-life work experience).

How will we get there from here?

The Congressional Research Service, the branch of the Library of Congress that responds to research requests from members of Congress, was asked to study prison populations and costs and project these in the future. CRS published its report in April 1974,[65] concluding that prison populations would fluctuate in the years between 1973 and 1980, but that precise predictions were beyond the abilities of social scientists and the reach of the study.[66]

Despite an inability to predict prison populations, the CRS discovered a close correlation between unemployment and admissions to prison (with a one-year time lag). A close correlation was also found between rates of admissions and rates of release (also with a one-year time lag). Thus, the numbers of people exposed to prison experience is expected to rise as unemployment increases.

Nevertheless, it appears likely that prison populations will eventually decrease, if for no other reason than the high cost of incarceration. Recently, in Minnesota, a legislatively-established "Select Committee on Minnesota Correctional Institutions" published its final report recommending that programs be developed to reduce Minnesota's prison population by two-thirds. One alternative considered by the Committee was "no major changes." This strategy, it was found, would create a 40 percent increase in operating costs in the next five years.[67]

65/ William H. Robinson, Phyllis Smith, Jean Wolf, Prison Populations and Costs -- Illustrative Projections to 1980 (Washington: Congressional Research Service, Library of Congress, 1974).

66/ Ibid., p. 17.

67/ Select Committee on Minnesota Correctional Institutions, "Final Report," 1975.

Several movements suggest that the federal government is preparing to act on prison industries. In July, 1973, Senator Percy introduced a bill[68] which would have authorized the Attorney General to make disbursements from a fund to "qualified applicants" for the purposes of training or employing offenders, or both. The disbursements could be in the form of loans, contracts and grants.

Funds could be disbursed only if the proposed project met certain requirements as follows:

1. the offenders being employed or trained were to receive wages "at a rate which shall not be less than that paid for work or training of a similar nature in the locality in which the work or training is to be performed."

2. products produced or services provided "may be sold or otherwise disposed of or performed in the same manner and to the same extent as other products or services of a like kind or nature produced or performed by individuals other than offenders."

3. offenders should have been likely to find employment after release as a result of the project.

The bill in three short subsections thus would have eliminated for some projects the effect of state use restrictions, required a prevailing wage for those projects and established the likelihood of an offender's finding a job as a criterion for federal support. It did not have the support of the Nixon administration. The bill was reintroduced in April, 1975.[69]

As part of its massive study of the criminal justice system, the National Advisory Commission on Criminal Justice Standards and Goals reviewed correctional industries in the country. The Commission recommended doing away with legal restrictions on open marketing, transportation and sale of prison-made goods, and further recommended private employment of offenders and payment of market wages in prison industries operated by states. The

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68/ S. 2161.

69/ S. 1533, April 24, 1975.

Commission called state use restrictions a "blow" from which "prisons have not recovered."[70] The Commission supported the "reintegrative" purposes of correctional industries. Following from that conclusion were these program elements: job diversification, work as part of a training program providing for involvement of offenders in deciding on their work assignments, an opportunity to succeed on the job, incentives to instill good work habits, and skill development in a number of areas. The Commission also recommended close cooperation with industry management and labor, use of work furlough for those whose training needs could not be met in the institution, and prevailing pay.[71]

The Commission's emphasis on training may be shared by relatively few as the major goal of prison industries, but it illustrates the level of confusion about industries goals that exists, and suggests the dangers of attempting to set a national policy in an area that traditionally has been state-regulated.

A further attempt to clarify and mold national prison industries policy is a project recently funded by the Law Enforcement Assistance Administration. The LEAA project will be a study of the economic and rehabilitative aspects of prison industries. The contractor is "to evaluate the business management and rehabilitative functions of prison industrial systems, to recommend program changes that will create self-supporting prison labor systems within the context of comprehensive offender training programs, and to provide the program planning and technical assistance needed to carry out these recommendations."[72] The Request for Proposal gives as goal priorities for prison industries "providing the inmate with job skills, good work habits, confidence in the ability to work and compensation for all work performed." Presumably these components of the "rehabilitative potential" of prison industries, as LEAA puts it, are expected to contribute to post-release employment of offenders, and to reduced recidivism.

70/ National Advisory Commission on Criminal Justice Standards and Goals, Corrections, (Washington: Government Printing Office, 1973), p. 388.

71/ Corrections, op. cit., p. 387.

72/ Request for proposal No. J-001-LEAA-5, Nov. 21, 1974.

The above-described predictions of prison populations and of future configurations of correctional programming, proposals for changes in law that would affect prison industries, and modifications of prison industries recommended by study commissions and others present many exciting possibilities. They present problems as well:

-Problems connected with payment of the minimum wage were discussed above. This reform cannot take place in vacuo. A complete overhaul of industries would be required to make the minimum wage feasible for prisoners.

-Establishment of "collapsible" industries as recommended by Fogel raises many problems. Are industries not necessarily semi-permanent? How feasible is the degree of flexibility envisioned in Fogel's model?

-If prison industries are established on the basis of likelihood of commercial success, what role should other considerations play in industries selection--considerations such as relevance of experience in the prison industry to work in free-world industry, and numbers of inmates that can be assigned to the industry?

-If there is a tendency in American corrections toward greater use of community alternatives, with the result that prisons will be fewer and smaller and house only convicts with long sentences, problems of scale are presented. A 150-man institution where only 30 or 40 inmates wish to work in an industry is, practically speaking, restricted to one industry if it is run by the prison. How should that one be selected?

Correctional administrations for the most part lack experience in analyzing such problems. They need guidance from private industry and labor and from business management consultants. A National Commission on Prison Industry Standards, Administration and Marketing should be established to facilitate exchange of ideas among these groups and to design standards and guidelines for prison industries and to develop responses to problems such as those outlined above.

With help from private industry and from within, correctional administrators can define goals for prison industries, flush away outmoded practices with creative thought and hard study and realize the potential of prison industries.

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